U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10891930

Date: JUNE 9, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an aircraft marketing company, seeks second preference immigrant classification for the Beneficiary, an aircraft design engineer, as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director affirmed the denial on a subsequent motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their

equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. Although the Director found substantial merit in the proposed endeavor in the field of aviation, the Director concluded that the record does not establish that the Beneficiary's endeavor has national importance. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described the proposed endeavor as "[c]onsulting on passenger-to-freighter/passenger-to-air-ambulance conversions; designing, performing engineering calculations as per customer's particular requirements."[3] On appeal, the Petitioner states:

> The [B]eneficiary's expertise is needed to design various units, parts, and assemblies for the purpose of retrofitting passenger planes, such as Gulfstream and Cessna, to convert them into air ambulances, . . . referred to as Passenger to Ambulance (PTA) conversion . . ., a new endeavor for [the Petitioner]. . . . [The Petitioner], responding to the market growing demand, is also engaged in the Passenger to Freight (PTF) conversion of wide-body jets like the Boeing B-767 model for lease to its clients.

The Petitioner asserts on appeal that "PTF conversion is of national interest . . . [b]ecause of the projected growth of air cargo requirements at 5.3% per year coupled with the importance of airfreight as a very important (sometimes even critical) sector of air transportation and a vital component of the global economy." The Petitioner elaborates that passenger airlines replace older aircraft with newer models, selling the older aircraft to freight carriers who convert the aircraft to cargo planes, extending the aircraft's useful lifetime and increasing the overall cargo plane fleet.

The Petitioner asserts that "USCIS erroneously framed the issue of what the substantial merit means. *Dhanasar* explicitly states that substantial merit focuses not on the alien but on the specific endeavor. 26 I&N Dec. 889." The Petitioner's objection is misplaced, because the Director stated in the decision that "[t]he evidence submitted is sufficient to establish *the proposed endeavor* to work in the field of aviation design *has substantial merit*."

We agree that the proposed endeavor of retrofitting passenger planes to convert them into air ambulances and cargo planes has substantial merit; however, the record does not establish that the proposed endeavor has national importance as contemplated in *Dhanasar*.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at

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[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] Although we do not discuss each document in the record for brevity, we have reviewed the record in its entirety.

889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id* at 889-90.

The Petitioner does not establish how the Beneficiary's proposed endeavor, improving the Petitioner's ability to perform aircraft conversions, has broader implications beyond the Petitioner's business, such as improving the PTA or PTF manufacturing process in a way that would result in national or even global implications within the particular field. *See id.* Although the Petitioner's PTF and its new PTA endeavor may employ U.S. workers, the record does not elaborate on the specific types of workers, number of workers, and other salient details, in order for us to determine whether the endeavor's potential to employ U.S. workers is significant enough to rise to the level of national importance. The Petitioner generally references the benefits of PTA or PTF in extending aircrafts' useful lifetimes and increasing non-passenger fleets. However, the record does not establish the specific anticipated positive economic effects of the proposed endeavor. Furthermore, the record does not establish whether the positive economic effects that may result from the proposed endeavor would be in an economically depressed area. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.